90-1874

Supreme Court, U.S.
FILED
JUN 4 1991
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

IN RE: ARTHUR COURNOYER,

Petitioner,

PETITION FOR AN EXTRAORDINARY WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND

ROBERT D. POWELL
LAW OFFICES OF
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Attorney for Petitioner.

June 4, 1991

QUESTION PRESENTED

DID THE SUPERIOR COURT OF RHODE ISLAND VIOLATE PETITIONER'S RIGHTS UNDER THE 14 TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BY ORDERING THE DESTRUCTION OF NON-OFFENDING FIXTURES AND PERSONAL PROPERTY LAWFULLY PLACED ON HIS REALTY AS A METHOD OF ENFORCING A CONTEMPT DECREE, WITHOUT HOLDING A HEARING SPECIFICALLY FOCUSED ON THE VALIDITY OF THOSE ITEMS BEING ON PETITIONER'S PROPERTY?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

IN RE: ARTHUR COURNOYER,

Petitioner,

PETITION FOR AN EXTRAORDINARY WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND

JURISDICTION

Jurisdiction of the Court is invoked under 28 U.S.C. 1651 (a). This Petition seeks the issuance of the extraordinary writ of certiorari under said section, directed to the orders of the Superior Court of Rhode Island, dated February 20, 1991, and March 11, 1991, which order, in part, the demolition of Petitioner's garage, and demolition or removal and sale of his house trailer, and the removal and sale of his duly registered vehicles, directing that review of said matters be brought directly before this Court.

CONSTITUTIONAL PROVISION INVOLVED

Petitioner relies on a portion of Section 1 of the 14th Amendment to the Constitution of the United States, to wit:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner's history with the Town of Lincoln, Rhode Island, extends back to 1958, and marches through a massive amount of litigation. See *Cournoyer v. ZBR of Lincoln*, 92 R.I. 42, 166 A.2d 128 (1960); *Town of Lincoln v. Cournoyer*, 95 R.I. 20, 186 A.2d 728 (1962); *Town of Lincoln v. Cournoyer*, 102 R.I. 512, 232 A.2d 124 (1967); *Cournoyer v. Sharkey*, 107 R.I. 373, 267 A.2d 722 (1970); *Town of Lincoln v. Cournoyer*, R.I. 290 A.2d 600 (R.I. 1976); *Town of Lincoln v. Cournoyer*, –R.I.–, 375 A.2d 410 (R.I. 1977); *Town of Lincoln v. Cournoyer*, –R.I.– (Appeal #90-145A, summarily dismissed November 16, 1990). All this litigation stems from a Town Zoning Ordinance placing Petitioner's land in a residential zone, after it had been used for many years in a commercial enterprise, a junk yard for truck parts. Petitioner, in response to the Town's initial attempt to enforce its newly enacted ordinance, claimed "grandfather" rights. Somehow, these rights were waived, and a consent decree was passed in which Petitioner was

alleged to have agreed to conform his use of his property to the ordinance.

Throughout this litigation, Petitioner has claimed that he had never authorized the original consent decree of 1958, which consented to his waiver of his "grandfather rights" under the Town of Lincoln's zoning ordinance so assiduously enforced since 1958. He has never had a hearing on that claim, and all parties involved at the time in 1958, are deceased, save Petitioner.

Petitioner was incarcerated at least five times for contempt of court for failing to clear junked trucks and parts from his property. These parts have repeatedly been cleared off the land, and sold, the proceeds going to pay for administrative expenses. After the fifth imprisonment, the property was entirely cleared of all property in conformance with the Town's Zoning Ordinance. It is cleared as of this day.

As part of the Superior Court's order of February 22, 1990, for the stated purpose of depriving Petitioner of ever again being able to defy a Court order regarding his non-conforming use of his property (See Appendix H), Petitioner was ordered to remove from his property his house trailer, his garage, and several lawfully registered vehicles. The garage was built on Petitioner's property pursuant to a lawful building permit. Petitioner attempted to introduce the permit into evidence, but no hearing was conducted concerning its validity. Neither the Town of Lincoln nor any of the Petitioner's neighbors had complained about the garage. Petitioner's house trailer was upon his property and served as his home prior to any ordinance precluding it. He obtained and sought to introduce affidavits to that effect, but no hearing was ever held concerning this alleged pre-existing usage. No one had ever complained about the house trailer.

Finally, Petitioner maintains four registered vehicles on his property, that may not be classified as "junk" or "scrap," and these have not been complained of by the Town or his neighbors, yet the order requires their removal and sale.

It should also be noted that Petitioner was sentenced to serve six months at the Adult Correctional Institute of Rhode Island for Contempt of Court on February 22, 1990, sentence suspended. The suspension was vacated on March 11, 1991, and he began serving that sentence on that date. He was released on his own recognizance on May 9, 1991. An application for a writ of Habeas Corpus, filed in the U.S. District Court for Rhode Island, was denied on May 30, 1991, the stated grounds being that petitioner had not yet exhausted all of his state court remedies, as the appeal referenced below is pendding. The District Court did not reach the merits of the case.

Petitioner sought a stay of the Superior Court's Order, as it pertained to these items of property referred to above, seeking a hearing on his rights under Section 1, Amendment 14 to the U.S. Constitution. The Superior Court refused to stay its order, but authorized that the subject be briefed. Petitioner and counsel for the Town of Lincoln submitted briefs. Petitioner sought only a hearing to provide him with an opportunity to be heard on the validity of the placement of his garage, house trailer, and vehicles. The Court denied additional hearings, ruling the matter *res judicata*, although no specific hearing on the subject had ever been held. An application for an interlocutory stay was made to the Supreme Court of Rhode Island. Its ruling was that a stay would not issue, as the matter was *res judicata*.

Petitioner has appealed the Superior Court's Orders of February 20, 1991, and March 11, 1991, to the Supreme Court of Rhode Island. In addition to his Section 1, 14th Amendment rights, Petitioner will assert in that court rights under the 4th and 9th Amendments to the Constitution. Given its ruling on Petitioner's stay request, there is no doubt that the Supreme Court of Rhode Island will dismiss Petitioner's appeal.

Petitioner presented an application for injunctive relief to Justice Souter, on May 17, 1991, Case No. A-869, which application was denied on May 18, 1991.

REASONS FOR ALLOWING THIS REQUEST FOR ISSUANCE OF AN EXTRAORDINARY WRIT

With Justice Scalia's decision and caution in *Ohio Citizens for Responsible Energy, Inc., v. NRC*, 479 U.S. 1312, 93 L.Ed.2d 692, 107 S.Ct. 682 (1986), squarely in mind, as well as Rule 20 of this Court's Rules, it is submitted that absent the issuance of a writ of certiorari herein, Petitioner's lawful residence will be destroyed or sold; his garage, a lawful fixture on his property, will be destroyed, and his lawfully registered vehicles, used by him in his business, will be sold. The *res* that would be the basis for review by this Court of the what would no doubt be the ultimate and negative decision of the Supreme Court of Rhode Island, would no longer exist. Should this Court ultimately find the state actions below unconstitutional, the decision would be of little solace to the Petitioner. He would be left with an invitation toward further litigation, and little more, and confront a hardship in awaiting the finalization of the appeal process. *United States Alkali Export Association v. U.S.*, 325 U.S. 196, 89 L.Ed. 1554, 65 S.Ct. 1120 (1945).

This Court clearly has authority to resort to the common law writ of certiorari, in aid of its jurisdiction,

United States Alkali Export Ass'n, supra; Far East Conference v. U.S., 342 U.S. 570, 96 L.Ed. 576, 72 S.Ct. 492 (1952); *House v. Mayo*, 324 U.S. 42, 89 L.Ed. 739, 65 S.Ct. 517 (1945); *In re 620 Church St. Bldg.*, 299 U.S. 24, 81 L.Ed. 16, 57 S.Ct. 88 (1936), especially when Petitioner will suffer great harm awaiting the appeal process to be fulfilled. *Alkali Export Ass'n., supra.* Moreover, at this juncture, given the ruling of the Supreme Court of Rhode Island on Petitioner's request for a stay, it is safe to say that the sole appellate relief available to Petitioner on the important constitutional issues raised herein will be in this Court. Under these extraordinary circumstances, where an appeal in a state court is manifestly inadequate, the extraordinary relief herein requested is warranted *Ex Parte Fahey*, 332 U.S. 258, 91 L.Ed. 2041, 67 S.Ct. 1558 (1947).

Section 1 of the 14th Amendment clearly applies to the issues at hand, including actions of the Rhode Island judiciary. *Brinkerhoff-Faris Trust and Savings v. Hill*, 281 U.S. 673, 74 L.Ed. 1107, 50 S.Ct. 451 (1930); *Steel Corp. v. Glander*, 337 U.S. 562, 93 L.Ed. 1544, 69 S.Ct. 1291 (1949); *Avery v. Midland County, Texas*, 390 U.S. 474, 20 L.Ed.2d 45, 86 S.Ct 1114 (1968).

In the instant case, Petitioner submitted to the Rhode Island courts that all offending property had been cleared from his realty prior to the Superior Court's orders of February 20 and March 11, 1991. An order had been passed one year prior, on February 22, 1990, dealing with his house trailer, garage and vehicles, which he believed were not covered by orders of years passed, and which dealt with property not offensive to anyone. The stated purpose for including the garage, trailer, and vehicles was to insure that Petitioner did no further business

BEST AVAIL

on his property (See Appendix H). But they were lawfully on his property, and have uses other than business uses. He asked to be heard on this specific issue, as recently as March 1991, but found the courthouse doors closed to him. In effect, his property is being taken from him, destroyed, or will be sold, as part of the contempt process, without specific hearing or process, in direct violation of this Court's holding, limited to its facts, of *Hovey v. Elliot*, 167 U.S. 409, 42 L.Ed. 215, 17 S.Ct. 841 (1897). Also see *Brinkerhoff-Faris Trust and Savings v. Hill*, wherein Justice Brandeis, speaking for the Court, said

> whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it. (281 U.S. 673, at 682).

A court should not prescribe, as a means to enforce its orders, that its doors be closed to one in contempt in defense of either his liberty or property. *Deauville Associates, Inc., v. Eristave Tchitcherine*, 173 F.2d 745 (5th Cir. 1949).

The enforcement of the Rhode Island Court's Order would fall squarely within this caveat, and the *Hovey* prohibitions. In the instant case, without regard to Petitioner's constitutional rights, the Superior Court sought to enforce its orders by means other than fines or imprisonment, without proper process. This was inappropriate and beyond the Court's judicial power, *Deauville Associates, supra.* When a court so acts beyond its judicial power, its actions exemplify not mere error, but a usurpation of power. It is this sort of a situation that

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calls for the application of section 1651. *De Beers Consol. Mines v. U.S.*, 325 U.S. 212, 89 L.Ed. 566, 65 S.Ct. 1130 (1945).

> The due process clause of the Fourteenth Amendment does not take up the statutes of the several states and make them the test of what it requires, nor does it enable this court to reverse the decisions of the State Courts on questions of state law. What it does require is that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice, which lie at the base of all our civil and political institutions. *Herbert v. State of Louisiana*, 272 U.S. 312 (1926), at p. 316.

CONCLUSION

Petitioner asks for the issuance of an extraordinary writ of certiorari bringing the issue of the Superior Court of Rhode Island's actions with respect to his constitutional rights directly before this Court. In effect, Petitioner asks only for due process of law.

Respectfully submitted,

ROBERT D. POWELL
Attorney for Arthur Cournoyer

June 4, 1991

APPENDIX A

STATE OF RHODE ISLAND
PROVIDENCE, SC. SUPERIOR COURT

EQUITY NO. 26210

TOWN OF LINCOLN

VS

JOSEPH A. COURNOYER

ORDER

This matter came to be heard before the Court, the Honorable Justice Giannini presiding, upon respondent's hearing concerning constitutional issues. The issues were submitted on memorandum by the respondent and petitioner replied. The memoranda were supplemented by oral argument on April 29, 1991. After hearing thereon and consideration thereof, it is hereby

ORDERED as follows:

1. Respondents' request to present memoranda of law concerning constitutional issues having been granted and heard shall further be treated as a motion to reconsider and amend the Court's order dated February 20, 1990.

2. As such, respondent's motion to reconsider and amend is denied.

3. In doing so, the Court finds that the Supreme Court Order dated November 16, 1990 rendered final all issues relative to the arguments presently argued.

4. Had said arguments been presented to the Superior Court prior to the Court's order dated February 20, 1990 the Superior Court would have found Mr. Cournoyer's constitutional rights not to have been violated by the process followed in this case.

BY ORDER

_____

ENTER

_____

Justice of the Superior Court

PRESENTED BY:

/s/ James P. Marusak

James P. Marusak
GIDLEY, LOVEGREEN & SARLI
70 Westminster Street
Providence, Rhode Island 02903

APPENDIX B

SUPREME COURT OF RHODE ISLAND

No. 91-132-A.

Town of Lincoln

v.

Joseph Courmoyer.

ORDER

The defendant's motion to stay the order of the Superior Court entered in this matter on March 11, 1991 is denied. The Special Master's motion to remand the papers in this matter to the Superior Court for hearing scheduled for April 2, 1991 is granted. Following said hearing the papers shall be returned to this court forthwith.

Mrs. Justice Murray did not participate.

Entered as an Order of this Court this 28th day of March 1991.

By Order,

/s/ Beverly A. Clark per

Matthew J. Smith
Clerk

APPENDIX C

STATE OF RHODE ISLAND
PROVIDENCE, SC. SUPERIOR COURT

Equity # 26210

TOWN OF LINCOLN

VS.

JOSEPH A. COURNOYER, ET AL.

ORDER

This matter came to be heard before the Superior Court, Mr. Justice Gianinni presiding, on March 11, 1991, upon continuation of the Status Hearing of February 15, 1991.

After hearing thereon and consideration thereof it is hereby

ORDERED, as follows:

1. The suspension of the six month sentence imposed on February 15, 1991 is hereby vacated; the Respondent having failed to remove the violating vehicles, structures and materials as ordered.

2. The Respondent is ordered to serve six months in the Adult Correctional Institution.

3. At the request of the Respondent's counsel the hearing on the Special Masters request for payment of his fees from funds on deposit in the Registry of the Court is hereby continued to April 1, 1991 at 10 a.m.

4. The Special Master is ordered to make arrangements for the demolition of the garage; the sale of all materials and vehicles in the garage; the sale of all vehicles and plows now on the premises with the exception of the Respondent's passenger vehicle and the removal or demolition of the house trailer present on the premises.

5. The Respondent is assessed, and shall remain responsible to pay for, all costs and fees incurred in the prosecution of this Order and all other prior Orders of the Court.

6. In order to obtain the services to be engaged and the goods to be sold at appropriate values, the Special Master is directed to seek said services and sales by competitive bidding where feasible.

7. The Special Master is directed to advertise for a contract or contracts for services for the demolition and/or removal of the garage and trailer and to advertise for the sale of the contents of the garage and all other vehicles and items noted above. The Special Master shall endeavor to solicit at least three (3) competitive bids for the items of service and sale which bids shall be opened and awarded in open Court on a date certain to be selected by the Special Master. The Master shall retain the right to reject all bids and to go onto the open market with the approval of the court for good cause shown.

8. To effectuate prompt payment for any and all services and fees incurred pursuant hereto, the proceeds of any sale of goods and the amounts now on deposit with the Registry of the Court shall first be applied. If the costs and fees exceed said amount recovered and on deposit, then the excess shall be paid by the Town of Lincoln. Any amounts so expended by the Town shall be added to the amounts constituting a continuing lien upon the Respondent's property. All sums due to the Town of

Lincoln may ultimately be recouped pursuant to foreclosure and sale of the Respondent's property after further hearing by the Court.

9. The Respondent's request to present Memoranda of Law concerning constitutional issues is granted. Respondent shall present any such memorandum on or before March 22, 1991 and the Petitioner shall submit its reply on or before April 10, 1991.

10. The Respondent's request for a stay of implementation of this Order is denied.

BY ORDER

/s/ Shirley A. Connelly, Asst. Clerk

ENTER

/s/ Giannini, P.J./Rel.)
Justice of the Superior Court

Dated: March 15, 1991

Presented by

/s/ James P. Marusak

James P. Marusak
GIDLEY, LOVEGREEN & SARLI
170 Westminster Street
Providence, RI 02903

APPENDIX D

STATE OF RHODE ISLAND
PROVIDENCE, SC. SUPERIOR COURT

Equity # 26210

TOWN OF LINCOLN

VS.

JOSEPH A. COURNOYER, ET AL.

SUPPLEMENTAL ORDER

This matter came to be heard before the Superior Court, Mr. Justice Gianinni presiding, on March 11, 1991, upon Respondent's Motion to clarify paragraph #4 of the Order submitted by the Special Master and dated February 20, 1991.

After hearing thereon and consideration thereof it is hereby

ORDERED, as follows:

That paragraph #4 of the Order submitted by the Special Master on or about February 20, 1991 is hereby supplemented to reflect the clear intent of the Bench decision issued on February 15, 1991 which intent was plainly made known to all parties at that time.

As further detailed in said Bench Decision, by directing the Respondent "to clean up his property" the Court required Mr. Cournoyer to remove all vehicles from his

premises other than his personal passenger vehicle, as well as all other structures and materials delineated in the Order.

BY ORDER

/s/ Shirley A. Connelly, Asst. Clerk

ENTER

/s/ Giannini, P. J. (Ret.)
Justice of the Superior Court

Dated: March 15, 1991

Presented by:

/s/ James P. Marusak
James P. Marusak
GIDLEY, LOVEGREEN & SARLI
170 Westminster Street
Providence, RI 02903

APPENDIX E

STATE OF RHODE ISLAND
PROVIDENCE, SC. SUPERIOR COURT

EQUITY NO. 26210

TOWN OF LINCOLN

VS.

JOSEPH A. COURNOYER, et al.

ORDER

This matter came on to be heard before Judge Giannini, Presiding Justice of this Court, on February 15, 1991, upon status hearing and upon the Special Master's request for payment of his fees from the funds on deposit in the Registry of the Court; and after hearing thereon and consideration thereof, it is hereby

ORDERED

1. That Respondent is adjudged to be in civil contempt of the Orders of the Superior Court.

2. Respondent is hereby sentenced to serve a term of six months at the Adult Correctional Institution.

3. The purpose for the sentence is to get the Respondent to clean up his property.

4. Respondent is directed to clean up his property, to tear down the garage, and to remove the house trailer. If these are done by March 8, 1991, Respondent will not go to jail.

5. The sentence of six months for civil contempt is hereby suspended to see what the Respondent does about this matter by March 8, 1991.

6. This matter is continued to March 8, 1991, at 10:00 a.m. for a status hearing.

7. The request for payment of fees by the Special Master shall be considered by the Court at the continuation of this hearing on March 8, 1991, at 10:00 a.m.

By order,

/s/ Illegible
Deputy Clerk 2-20-91

ENTER:

/s/ Giannini, P. J.
Presiding Justice of the
Superior Court

DATED: February 20, 1991

PRESENTED BY:

/s/ Joseph T. Little
JOSEPH T. LITTLE, ESQUIRE
Special Master
225 Waterman Avenue
P.O. Box 14198
East Providence, RI 02914
434-3800

APPENDIX F

SUPREME COURT OF RHODE ISLAND

No. 90-145-Appeal.

Town of Lincoln

v.

Joseph A. Cournoyer, et al.

ORDER

This case came before this court for oral argument on November 5, 1990. Both parties had been ordered to show cause why the issues raised by this appeal should not be summarily decided. Defendant is appealing his contempt conviction. The conviction arises out of the defendant's failure to comply with a court decree ordering him to clean up his property. Defendant alleges that the Superior Court judge exceeded his authority in ordering defendant to remove his trailer home and garage from his property, and in enjoining defendant from keeping more than one registered vehicle on the property.

After careful consideration of the arguments and memoranda submitted by the parties, this court finds that cause has not been shown. Accordingly, we summarily decide that the trial judge did not exceed his authority in entering the above order.

Therefore, defendants' appeal is denied and dismissed. The decision of the Superior Court is hereby affirmed.

Entered as an Order of this Court this 16th day of November 1990.

By Order,

/s/ Beverly A. Clark

Matthew J. Smith
Clerk

Mr. Chief Justice Fay did not participate.

APPENDIX G

STATE OF RHODE ISLAND
PROVIDENCE, SC. SUPERIOR COURT

EQUITY NO. 26210

TOWN OF LINCOLN

VS

ARTHUR COURNOYER

DECREE

This matter came on for hearing on February 22, 1990, before Presiding Justice Giannini for the imposition of sanctions to be imposed upon the Defendant, Arthur Cournoyer, based upon the Bench Decision of February 21, 1990; and after hearing arguments of counsel, it is hereby

ORDERED, ADJUDGED and DECREED:

1. Defendant is sentenced to the A.C.I. for a period of six (6) months.

2. Said sentence is suspended upon the following conditions:

A. Defendant is required to clear from that land all vehicles, all parts of vehicles, all tires, all lumber, and all debris. Defendant does not have to clear those trees which might be uprooted and in a natural state.

B. Defendant is to remove anything that is inside the garage.

C. The garage must be removed from the land either by removal of the garage from the land or by the demolition of same with the rubbish and rubble from said demolition removed from the land.

D. Defendant is permitted to retain and drive on the land one vehicle, a 1979 Ford automobile with the present registration number WW 162. No other vehicles are allowed on the land.

E. In the event that it is necessary for Defendant to bring additional vehicles on the land to effectuate the cleanup of the land, the Defendant is directed to call the Special Master, Mr. Little, or his attorney, Charles Rogers, to obtain permission from Presiding Justice Giannini to bring any other vehicles onto the property.

F. The Defendant has until April 30, 1990 to clear the land, demolish or remove the garage and clear everything that is in the garage.

G. The house trailer on the premises must also be removed from the premises by April 30, 1990.

3. This case is continued for further hearing on Thursday, March 1, 1990, provided a Motion is filed by the Defendant prior to that time.

4. The Lincoln Police Department is hereby advised that the only vehicle allowed on the Cobble Hill Road property is a 1979 Ford with registration of WW 162. The Police Department is hereby advised that after March 1, 1990, there are to be periodic and random inspections of that real estate on a daily basis, one of which inspections must be between midnight and 5:00 a.m. The purpose of the inspections is to insure that no vehicles are on the premises other than the 1979 Ford with the registration of WW 162.

5. Mr. Little, Special Master, is directed to arrange to video tape the entire premises including the interior of the garage prior to February 28, 1990. In addition, the entire 30 odd acres must be video taped.

6. The Special Master is directed to go on the land on May 1st and no later than May 5th to video tape the garage, the contents of same and the entire 30 acres of the premises.

7. The Special Master, is hereby directed to arrange for both video tapes to be viewed by the Court on Monday, May 7, 1990.

8. This matter is continued for further hearing on Monday, May 7, 1990, at 10:00 a.m.

9. Nothing contained herein will prevent the Town from moving that the suspension of the 6-months sentence be removed if the Town is of the opinion that this Order has been violated. The Town may present a Motion to have the Defendant adjudged in contempt.

ENTERED as a Decree of this Court this day of February, A.D. 1990.

By Order,

_____

Clerk

ENTER:

_____

JUDGE

APPENDIX H

SUPERIOR COURT OF RHODE ISLAND

EQUITY NO. 26210

TOWN OF LINCOLN

VS

ARTHUR COURNOYER

DECREE

This matter came on for hearing on February 21. 1990, before Presiding Justice Giannini on the Motion filed by the Plaintiff, Town of Lincoln, who adjudged the Defendant in Contempt. On the basis of the findings of fact contained in the Bench Decision of February 21, 1990, it is hereby

ORDERED, ADJUDGED and DECREED:

1. That the Defendant has violated the zoning ordinance of the Town of Lincoln and is in contempt of the Decree of this Court entered on February 18, 1958.

ENTERED as a Decree of this Court this day of February, A.D. 1990.

By order,

ENTER: _____
Clerk

_____

JUDGE

[Excerpts from Transcript of Proceedings of February 21, 1990]

[12] THE COURT: I'm going to discuss this proposal, but before I do, I want to make some comments on statements made by Mr. Rogers on behalf of this respondent. The first statement is that what I heard this morning is in large measure just a rehash of everything I heard in the courtroom. The same arguments have been made. I heard him say that Mr. Little isn't doing anything. It's not for him to judge. That's for me to judge. I have heard him talk about his trailer and where he has to live. I have made a ruling on that. I made a ruling with regard to the garage. I see the garage as the means by which he is able to conduct an illegal business in a residential zone. Now, whether that ruling is correct or not in light of the purported building permit for that garage is another matter. Supreme Court has that. There was evidence in the record that there was no building permit issued, and there is no contradictory evidence to that.

Now, there are a couple of things that were said by Mr. Rogers that I think ought to be said, even though largely it's merely a rehash. This business about the tar-filled trailer and it being the source of a large amount of the $25,000 estimate given to Mr. Little by Metals Recycling, as to that, it doesn't seem to the Court to mean anything that no one has ever moved it. It's Mr. Cournoyer's responsibility to move it. And whether the Town had moved it, and probably spent a large amount of money in doing so, and charged it to Mr. Cournoyer, or if Mr. Cournoyer is responsible to move it and pays a lot of money to do it, or if Mr. Little gets Metals Recycling to do it for a lot of money, it's all going to come out of Mr. Cournoyer's pocket. The fact that it hasn't been moved before doesn't change anything. It's got to be

moved. And whether it was moved in Judge Pettine's order and the costs charged to Mr. Cournoyer, or whether Mr. Cournoyer is required to move it now, it all comes out to the same thing, Mr. Cournoyer is going to pay for it.

With respect to Mr. Cournoyer's inability to clean that place up now because he's in prison, that man was given better than two months to clear it up, and he defied the Superior Court. And now he's claiming that he can't comply because he's incarcerated. That's trying to have it both ways. It's up to him to figrue out a way. The way Mr. Little was able to get hold of Metals Recycling, Mr. Cournoyer can do the same thing. If he's able to use the telephone to talk to reporters, he's able to call Metals Recycling and probably some established junk dealers to find out how to go about doing it. I don't accept the argument that his incarceration prevents him from dealing with people on the outside. I would have to have John Moran, Director of Corrections, tell me that. I would have to have John Moran tell me that people who are incarcerated cannot do business on the outside, if that's a legal business. Unfortunately, there are people who are incarcerated who have no trouble conducting illegal business on the outside.

With regard to this question that it's unreasonable to expect Mr. Cournoyer to clean this area without the use of a couple of trucks, flies absolutely in the face of what the Court said on the record in the courtroom. The Court recognized in entering this order that in addition to the use of that garage, the other means by which Mr. Cournoyer was able to conduct this illegal business was to be able to use a pick-up and a tow truck.

* * *

[22] Now, the cleanup must include everything that is in that garage. That garage is the source of Mr. Cournoyer's violation of this zoning ordinance. If that garage is eliminated, he's not going to have any place to work. But if the Supreme Court says that my ruling in that regard is improper, then at least the material in that garage must be removed, because there is no [23] question in my mind that whatever is in that garage is used to further this illegal conduct of the business.

FILED
JUL 12 1991
OFFICE OF THE CLERK

No. 90-1874

In the Supreme Court of the United States

OCTOBER TERM, 1990

IN RE: ARTHUR COURNOYER,
PETITIONER.

OPPOSITION OF RESPONDENT TOWN OF LINCOLN TO PETITION FOR AN EXTRAORDINARY WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND

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QUESTION PRESENTED

Should This Court Accept This Matter For Review And Issue An Extraordinary Common Law Writ Of Certiorari Where:

1. The Matter Complained Of Concerns A Ministerial Order Of An Inferior State Court After Remand From A State Court Of Last Resort;
2. The Petitioner Currently Has Pending An Appeal Before The Supreme Court Of The State Of Rhode Island Concerning Said Further Court Order Which Has Not To Date, Been Finally Resolved;
3. The Constitutional Issues Which Petitioner Seeks To Raise Herein Concern An Order Issued By The Superior Court On February 22, 1990 Which Order Was Appealed By The Petitioner To The Rhode Island Supreme Court And Which Appeal Was Dismissed By That Court Resolving All Present Issues By Decision Dated November 16, 1990;
4. The Petitioner Is Accordingly In Violation Of Rule 13.1 Of The Rules Of The Supreme Court In That He Has Filed This Petition More Than Ninety (90) Days After The Entry Of Final Judgment On The Issues Raised;
5. Where The Petitioner Incorrectly And Insufficiently States The Facts And Travel Of This Case Which Spans Thirty-Three (33) Years Of Contumacious Behavior On The Part Of The Petitioner; And Where
6. The Superior Court's Order Was Constitutionally Correct?

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In the
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OPPOSITION OF RESPONDENT TOWN OF LINCOLN TO PETITION FOR AN EXTRAORDINARY WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND

JURISDICTION

The respondent denies that jurisdiction is properly invoked by the petitioner pursuant to 28 U.S.C. 1651(a) in that said writ is not "agreeable to the usages and principles of law" and is not "in aid" of this Courts' jurisdiction. Furthermore jurisdiction is improperly invoked in that the petitioner is guilty of laches, unclean hands and insofar as the petitioner has violated the threshold time limitations of Rule 13.1 of the Rules of the Supreme Court.

RESPONDENT'S STATEMENT OF FACTS

The following facts were before the Rhode Island Superior Court, Mr. Justice Anthony Giannini presiding, when the Respondent was found in contempt:

1. Arthur Cournoyer's property is located in residential and agricultural zones in the Town of Lincoln, Rhode Island.

2. Commercial uses are not permitted in residential zones under the Lincoln Code of Ordinances.

3. House trailers are not permitted in residential zones unless located in a duly licensed trailer park.

4. On February 18, 1958 the Superior Court of the State of Rhode Island found in the action below (Equity No. 26210) "that the use to which said real estate is being put ... is a public nuisance". The Court accordingly in 1958 ordered Arthur Cournoyer to remove from the subject real estate all "*trucks, trailers* ... [etc.]". (See Exhibit 1, Para. #2).

5. The Superior Court, by *agreement* of the parties, ordered Cournoyer "permanently enjoined from violating the provisions of the Zoning Ordinances of the Town of Lincoln". (See Exhibit 1, Para. #3).

6. The initial determination prohibiting Cournoyer's use of the premises for truck storage, or junk and salvage purposes has been cited or upheld by the Supreme Court of the State of Rhode Island on numerous occasions. See, *Cournoyer* v. *ZBR of Lincoln*, 92 R.I. 42, 166 A.2d 128 (1960); *Town of Lincoln* v. *Cournoyer*, 95 R.I. 20, 186 A.2d 728 (1962); *Town of Lincoln* v. *Cournoyer*, 102 R.I. 512, 232 A.2d 124 (1967); *Cournoyer* v. *Sharkey*, 107 R.I. 373, 267 A.2d 722 (1970); *Town of Lincoln* v. *Cournoyer*, 290 A.2d 600 (1976); *Town of Lincoln* v. *Cournoyer*, 375 A.2d 410 (R.I. 1977). ("Arthur's intransigency has caused him to have more than his day in court. It has enabled him to make a lifetime career out of deliberately flouting judicial mandates, thereby causing an expenditure of judicial effort and time that could have been put to much better use elsewhere". *Id.* at p. 413) *Town of Lincoln* v. *Cournoyer*, ____ A.2d ____ (R.I. Appeal #90-145A) summarily dismissed November 16, 1990.

7. After the February 18, 1958 Consent Judgment, due to Cournoyer's non-compliance, the Town was forced to seek an Order finding Cournoyer in contempt on May 1, 1958. (See Court docket attached as Exhibit 2).

8. The Court docket reveals that Cournoyer was found in contempt on July 6, 1959.

9. On November 10, 1959 the Court again found Cournoyer in contempt. Cournoyer was incarcerated and released by Order on December 6, 1959.

10. A decree was entered on December 15, 1959.

11. On May 15, 1961 the Town was again forced to seek an Order of Contempt and a decree entered accordingly.

12. Cournoyer was again found in contempt on June 30, 1961.

13. On February 3, 1969, Cournoyer was again found in contempt.

14. On April 30, 1969 Cournoyer was committed to the Adult Correctional Institution (hereinafter "the ACI") for contempt for the second time.

15. A Special Master was appointed on January 4, 1971 for the purpose of supervising the Court ordered clean up. (Hundreds of vehicles were removed).

16. Not having cleaned his property, an Order authorizing clean up and sale of goods was entered on June 20, 1974.

17. Cournoyer tracked more junked vehicles onto his property and the Town again sought an Order for contempt on April 24, 1975; a Special Master was again appointed on June 9, 1975.

18. The Town again sought contempt Orders and Orders were issued on:

(A) May 19, 1976
(B) June 18, 1976
(C) April 4, 1977

19. On July 9, 1980 the Court again found Cournoyer in contempt and he was sentenced to the ACI for the third time.

20. More junk was brought onto the property and on November 13, 1981 an additional clean-up order was entered.

21. On November 15, 1982 another clean-up order was entered.

22. Mr. Cournoyer claimed bankruptcy on or about June 25, 1982 *purportedly* due to an inability to pay the lawyers' bills of previous attorneys.

23. Again on March 30, 1983 an order to clear Cournoyer's land was entered.

24. In 1983, in an attempt to argue that his junk was of eleemosynary quality (and accordingly permitted under local zoning), the "Truck Museum of Rhode Island" was "created".

25. Mr. Cournoyer used the Bankruptcy Court to argue that the Superior Court mandates ordering the clean-up of his junkyard were automatically discharged by the Bankruptcy. This argument was denied by the Bankruptcy Court in a Decision dated October 13, 1984, upholding the efficacy of the Superior Court clean-up orders. *In re Cournoyer*, 43 B.R. 354 (Bkrtcy R.I. 1984). The Bankruptcy Decision was affirmed by the Federal District Court on September 12, 1985. In that case Mr. Justice Pettine noted "given the tortuously long history of this case . . . and the seemingly endless series of legal maneuvers employed by Appellant Cournoyer and his counsel to avert the inevitable day of reckoning, I cannot now remand this case for future proceedings. Appellant has had more opportunities than he deserves to take appropriate action and dating to 1958, he has not done so." Judge Pettine's decision was affirmed by the United States Court of Appeals for the First Circuit on May 9, 1986. *Cournoyer* v. *Town of Lincoln*, 790 F.2d 971 (1st Cir. 1986). In 1990, Cournoyer paid his creditors and the "Bankruptcy" action was dismissed.

26. After creation of the truck "museum", on May 30, 1983, Cournoyer sought, In Bankruptcy, "to abandon" 111 (one hundred and eleven) vehicles on his property which he referred to in a filed memorandum as "skeletons" which were and not even worth "scrap value".

27. The Bankruptcy Court allowed the abandonment of the rusting junks based upon his representations.

28. Mr. Cournoyer promptly "deeded" the junked "skeletons" to the "Truck Museum" where they were promptly canonized as "museum exhibits".

29. Cournoyer and the Truck Museum next sued the Town in Federal Court claiming that the Truck Museum was a valid entity and that the Town had, in following the clean-up orders, improperly removed Truck Museum "exhibits" and other property (mostly junked vehicles and a trailer) from the land. That action, C.A. 86-0676P, was dismissed with prejudice in February of 1988.

30. Federal District Court Judge Raymond Pettine separately ordered Cournoyer and the Truck Museum to clean the premises on May 15, 1986.

31. The Federal Court found Cournoyer in contempt of that order on October 15, 1986 and ordered the Town to remove and sell all violating vehicles.

32. The Town was forced to clean the premises in 1986 when hundreds of junked trucks and vehicles were removed and again in 1987 pursuant to Judge Pettine's instruction, due to Mr. Cournoyer's continued intransigence.

33. The Superior Court again confirmed Cournoyer's lack of compliance by Orders dated August 5, 1987 and November 2, 1987.

34. On February 26, 1988 the Town was again forced to seek a finding of contempt in the Superior Court as Cournoyer continued to conduct commercial junk and salvage operations on the property.

35. The "Truck Museum of Rhode Island" was added as a party defendant to this case out of an abundance of caution in March of 1988 and Joseph Little was appointed as Special Master in May of 1988.

36. After extensive trial, in November of 1988, the "Truck Museum" agreed to clear the premises of "exhibits" which it allegedly owned. The "Truck Museum" is no longer a denizen of Lincoln or anywhere else to our knowledge.

37. On July 26, 1989 and again on January 24, 1990 the Town was forced to seek contempt against Mr. Cournoyer for continued violations following the November 1988 cleanup.

38. On February 21, 1990 the Superior Court found Cournoyer in contempt. This finding was based largely upon the extensive evidence adduced during the November 1988 trial and thereafter.

39. On February 22, 1990 Cournoyer was sentenced to the ACI for the fourth time. The six (6) month sentence was suspended on condition that he clean his property by April 30, 1990. That Order also commanded Cournoyer to remove the subject garage and trailer. (Decree dated March 1, 1990).

40. Cournoyer appealed that Order to the Supreme Court (Appeal #90-145A) on March 8, 1990, broadly raising constitutional arguments against the removal Orders.

41. By May 7, 1990 Cournoyer had not, despite his assurances, cleared his property as ordered and, after hearing, Cournoyer was again sent up to the ACI for a fourth time after the Court vacated the suspension of his sentence.

42. On June 14, 1990 the Defendant was released by consent upon his promise that the premises would be cleared by July 25, 1990. (See Exhibit 3 Consent Order dated June 14, 1990).

43. Again Cournoyer failed to do as promised and he was re-incarcerated, after hearing, thereafter. (Fifth incarceration).

44. On November 16, 1990 the Rhode Island Supreme Court, after briefing and oral argument, dismissed Cournoyer's Appeal specifically finding that the Superior Court had authority to order the removal of the trailer, vehicles and garage. (See Exhibit 4).

45. Well after serving the remainder of his sentence the matter was convened again on February 15, 1991 for a "status hearing".

46. On February 20, 1991 the Court entered an order finding Cournoyer still in contempt and reiterating the ordered

removal of the trailer, garage, vehicles and junk. Cournoyer was given another six (6) month suspended sentence and was afforded the opportunity to clear his land by March 8, 1991.

47. On March 8, 1991 Cournoyer again had failed to remove all structures and vehicles as ordered. Again, after the status hearing, he was ordered to serve the six (6) month sentence imposed in February 1991 and the Special Master was directed to conduct the clean-up and sale. (Twenty-third contempt related Order) (Sixth Incarceration). Cournoyer was released by the Supreme Court on personal recognizance thereafter.

48. On March 19, 1991, Cournoyer again appealed the removal orders of March, 1991 to the Rhode Island Supreme Court wherein he raised basically the same issues previously decided by Appeal #90-145 four (4) months earlier. That appeal is now pending before the Rhode Island Supreme Court.

OBJECTION TO PETITIONER'S STATEMENT OF THE CASE

The petitioner's statement of the case is inaccurate and misleading. The Respondent alerts the Court to the following misstatements:

(1) The 1949 Zoning Ordinance of the Town of Lincoln did not place "Petitioner's land in a residential zone, after it had been used for many years in a commercial enterprise". That issue was long ago settled but has been re-argued by petitioner ad infinitum. The testimony of Henry Gagnon below reaffirmed this finding.

In 1960, Cournoyer petitioned the Zoning Board of Review for a variance in order to conduct the commercial use. He never argued therein that he had a pre-existing non-conforming use and his petition was denied. See *Cournoyer* v. *Zoning Board of Review of Town of Lincoln*, 166 A.2d 128 (R.I.

1960). Twenty years later at a second zoning hearing on application for a variance in 1981, Cournoyer first argued inconsistently, that his use was "grandfathered". Witnesses Henry Gagnon and Ronald Gagnon appeared and testified under oath on December 1, 1981 that Arthur Cournoyer did *not* commence his commercial use of the property until approximately 1953, at least four years *after* the adoption of the Lincoln Zoning Ordinance. Cournoyer's second petition for variance was denied by the Zoning Board by decision dated January 4, 1981. Cournoyer appealed the decision to the Rhode Island Superior Court where it was docketed as Civil Action #82-22. His appeal was ultimately denied. His "nonconforming use" argument was deemed barred by reason of *Res Judicata* in the decisions *Cournoyer* v. *Sharkey*, 267 A.2d 722 (R.I. 1970) and *Lincoln* v. *Cournoyer*, 375 A.2d 410 (R.I. 1977).

(2) Thirty-three (33) years ago in 1958, the petitioner entered into a "Consent Decree" admitting that his commercial use of the property was a "public nuisance" and was violative of existing zoning laws. (See Exhibit 1) The petitioner's argument that he never authorized the Consent Decree was raised by Mr. Cournoyer in 1977 during an earlier appeal taken in this case *Lincoln* v. *Cournoyer, et al*, 118 R.I. 644 (1977). The Court found that his contention was nineteen (19) years too late and was accordingly barred by the doctrine of res judicata. *Id.* at 649-50.

(3) All parties involved at the time of the 1958 decree are not "deceased" as claimed. Various witnesses including Cournoyer's next door neighbor, Henry Gagnon, (the prior owner of Cournoyer's property) as well as Gagnon's son, Ronald, have attested to his lack of a grandfathered commercial enterprise and are still alive. Also very much alive is Gerald Oster, the prior Town Solicitor who signed and attests to the validity of the 1958 consent decree.

(4) Cournoyer was not jailed merely for "failing to clear junked trucks . . . from his property" he was jailed for wilfully

violating Court orders by *inter alia* bringing junked automobiles onto his property repeatedly after the Court appointed Special Master had conducted mass removals.

(5) The property is not "cleared as of this day" as alleged. Commercial vehicles, a commercially used structure and a plumbing-and-septic-free mobile home still remain in violation of Town Zoning Ordinances and Court orders.

REASONS FOR DENYING THE REQUEST FOR ISSUANCE OF AN EXTRAORDINARY WRIT

The petitioner's brief appears to have been written without a complete knowledge of the facts and travel of this tremendously bizarre case. The thirty-three (33) year history of this account is summarized above. Mr. Cournoyer is best defined by Mr. Webster:

> *phoenix*/'fe-niks/n . . . a legendary bird which according to one account lived 500 years, burned itself to ashes on a pyre, and rose youthfully alive from the ashes to live another period. . . . *Webster's New Collegiate Dictionary* (5th Edition)

Legend and lore aside, the Cournoyer saga of tracking junked vehicles onto his property and using his land in defiance of Court orders and Town Zoning laws should now be ushered to eternal rest.

A. The Orders Are Not Those Of A Court Of "Last Resort"

This petition purportedly seeks review of two (2) orders. The first dated February 20, 1991 and the second dated March 11, 1991. Both were orders of the Superior Court of the State of Rhode Island. The Superior Court is *not* a "State Court of Last Resort" but is, instead, a "Lower State Court" by definition.

Rule 13.1 of the Rules of the Supreme Court of the United States reads as follows:

REVIEW ON CERTIORARI; TIME FOR PETITIONING

> .1. A petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a *state court of last resort*, a United States court of appeals, or the United States Court of Military Appeals shall be deemed in time when it is filed with the Clerk of this Court within *90 days after the entry of the judgment*. A petition for a writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed in time when it is filed with the Clerk within 90 days after the entry of the order denying discretionary review. (Emphasis added).

The general rule as to reviewability of a writ is that a state court judgment must be subject to no further review or correction in any other tribunal. It must also be an effective determination of the litigation or "the final word of a final Court." *Market St. R. Co.* v. *Railroad Commission*, 324 U.S. 548, 551 (1945). *Supreme Court Practice*, Stearn, Robert L. (6th ed.) at p. 122.

The finality rule serves several ends by avoiding piecemeal review of state court opinions, by avoiding "advisory" opinions, and by leaving federal intrusion into state affairs at a minimum. See *Republic Natural Gas Co.* v. *Oklahoma*, 334 U.S. 62, 67-69 (1948).

Here, the orders of the Superior Court dated February 20, 1991 and March 11, 1991 are currently under appeal to the Supreme Court of the State of Rhode Island. (Appeal No. 91-132A). This petition is, at best, premature and this Court should accordingly refuse to review the matter by means of extraordinary writ.

B. The Petition For Writ Is Otherwise "Out Of Time"

Rule 13.3 of the Rules of the Supreme Court of the United States reads as follows:

> .3. The Clerk will refuse to receive any petition for a writ of certiorari which is jurisdictionally out of time.

Combined with Rule 13.1, Rule 13.3 jurisdictionally requires that the necessary petition be filed "90 days after the entry . . ." of a judgment ". . . entered by a state court of last resort. . . ."

The order of the Superior Court compelling removal of the commercial vehicles, commercial garage and illegal mobile home was issued on February 22, 1990. That order was appealed to the Rhode Island Supreme Court in Appeal #90-145. The petitioner raised similar arguments therein and his appeal was dismissed by Decision of the Rhode Island Supreme Court on November 16, 1990. (See Exhibit 4)

While the petitioner attempts to ignore the effect of that decision, the Town argues that *res judicata* now applies and that this petition for review is otherwise untimely pursuant to Rules 13.1 and 13.3.

The subject Superior Court orders dated February 20, 1991 and March 11, 1991 were generated after status hearings merely upon remand from the Supreme Court. A civil contempt judgment imposed for refusing to obey a court order is considered "final". See *New York Times Co.* v. *Jascalevich*, 439 U.S. 1317, 1319 n.3 (1978) (White J., in chambers). If nothing more than a ministerial act remains to be done on remand, a judgment is generally regarded as final. *Pope* v. *Atlantic Coast Line R. Co.*, 345 U.S. 379, 382 (1953).

Thus, where a state court of final resort renders a final decision disposing of federal issues and remands the case to the trial court for further proceedings, a trial court judge cannot

be reviewed by the Supreme Court if the judgment is appealable under state law. This is true even though the appellate court considers itself bound on the second appeal by its decision on the first appeal. In such cases, the second appeal, though a mere formality, is considered a prerequisite to Supreme Court review. *McComb* v. *Commissioners*, 91 U.S. 1 (1875); *Great Western Tel. Co.* v. *Burnham*, 162 U.S. 339 (1896).

On the other hand, if the remand to the trial court is for the ministerial purpose of entering a prescribed decree which is not subject to further review under state law, the judgment of the Appellate Court is considered to be the judgment of the highest court in which decision could be had, despite remand. See *Cole* v. *Violette*, 319 U.S. 581 (1943). See also, *Supreme Court Practice*, supra, at p. 140.

In this case, the status hearings after remand in 1991 were ministerial in nature. The final order concerning removal of the offending objects was entered by the Rhode Island Supreme Court on November 16, 1990 and the present petition for review is accordingly time-barred by the United States Supreme Court Rules. The petitioner's later attempts to clarify or amend the opinion in 1991 did not suspend the finality of the 1990 state court Judgment. See *Department of Banking* v. *Pink*, 317 U.S. 264, 266-7 (1942).

C. Review Is Improper As The Matter Is Res Judicata

If state law makes it improper to raise federal questions for the first time in a trial court after a case has been remanded to it by a state appellate court, such questions are considered as being raised too late and the Supreme Court will accordingly decline jurisdiction. See *Union Mutual Life Ins. Co.* v. *Kirchoff*, 169 U.S. 103 (1898), *Louisville & Nashville R. Co.* v. *Higdon*, 234 U.S. 592, 597-8 (1914). *Supreme Court Practice*, supra.

In Rhode Island, the doctrine of *Res Judicata* applies as an absolute bar to a cause of action where there exists:

1) identity of parties
2) identity of issues and
3) finality of judgment.

Airlite Products, Inc. v. *Gilbane Building Co.*, 115 R.I. 410, 422, 347 A.2d 623, 630 (1975); *DiSaia* v. *Capital Industries, Inc.*, 113 R.I. 292, 298, 320 A.2d 604 (1974); *Beirne* v. *Barone*, 529 A.2d 154, 156 (R.I. 1987).

When the doctrine is invoked it serves to render the prior judgment conclusive as to any issues that were raised or which *could have been raised* and litigated. *Zalobowski* v. *N.E. Teamsters*, 410 A.2d 436, 437 (R.I. 1980); *Armstrong* v. *Armstrong*, 362 A.2d 147, 149 (R.I. 1976); *Corrado* v. *Providence Redevelopment Agency*, 320 A.2d 331, 332 (R.I. 1974).

The principals of Res Judicata will operate to bar re-litigation of the same matters even when constitutional issues are presented. See *Hebert* v. *Ventetuolo*, 480 A.2d 403 (R.I. 1984).

It has long been acknowledged in Rhode Island that a finding of contempt is a "final" decree for the purposes of an appeal. *Jastram* v. *McAuslan*, 19 R.I. 390 (1909).

Cournoyer clearly questioned the authority of the Superior Court concerning the removal of the garage and trailer in his appeal one year ago. (Brief of Respondent/Appellee, Issues Presented, Appeal #90-0145).

While the constitutional arguments presented by the Petitioner in his 1991 appeal are certainly more lengthy, the Petitioner does not raise new issues. *Res Judicata* bars the present Rhode Island Supreme Court Appeal as the 1990 Supreme Court Decision was a final adjudication of all issues which were or may have been raised at that time.

The pending 1991 appeal is merely an attempt to re-litigate the Order entered in 1990. Further consideration of the issues

contained in this petition, and in the appeal now pending below, is accordingly inappropriate.

D. The Constitutional Arguments Are Otherwise Improperly Raised On Subsequent "Appeal" Of A Contempt Order Issued For Non-Compliance With A Prior Order.

An Order issued by a Court of competent jurisdiction must be obeyed until it is reversed by orderly and proper proceedings. This is true despite an attack on the constitutionality of the act under which the Order is issued. *United States* v. *United Mine Workers*, 330 U.S. 158 (1947).

The alleged invalidity of a Court Order is not generally considered a defense in a contempt proceedings alleging disobedience of the Order. *Walker* v. *Birmingham*, 338 U.S. 306 (1967); *United States* v. *Seale*, 461 F.2d 345 (7th Cir. 1972); *Pennsylvania* v. *I.U.O.E.*, 552 F.2d 498 *cert. den.* 434 U.S. 822 (3rd Cir. 1977).

One who believes that a Court Order is erroneous is not relieved of his duty to obey it. The proper course of action is to comply and cite the Order as reversible error. *Chapman* v. *Pacific Tel. and Tel. Co.*, 613 F.2d 193 (9th Cir. 1979).

Cournoyer (while not complying with clean-up) did appeal this action and cite the Order as reversible error below in Appeal 90-0145. The Superior Court, exercising restraint, did not order execution by the Special Master of its removal Orders during the pendency of the appeal. That appeal was decided against Cournoyer on November 16, 1990.

A contempt proceeding does not reopen to reconsideration the legal and factual basis of the Order alleged to have been disobeyed and thus become a retrial of the original controversy. The procedure to enforce the Court's Order commanding an act should not be rendered so inconclusive as to foster experimentation with disobedience. *United States* v. *Rylander*, 460 U.S. 752 (1983) Reh. Den. 462 U.S. 1113.

The Rhode Island Supreme Court has limited its review of sanctions imposed for civil contempt to a review of the Order to assure that the terms are reasonable. *Moran* v. *Rhode Island Brotherhood of Correctional Workers*, 506 A.2d 452 (R.I. 1986). In this case the Supreme Court has found the Superior Court's Removal Orders to have been reasonable and within the authority of the Superior Court. (See Exhibit 4)

The Rhode Island Supreme Court has acknowledged that it will not countenance collateral attacks upon an underlying Order when the argument is raised on review of a judgment of civil contempt stemming from disobedience of the Order. *North Providence School Committee* v. *North Providence Federation of Teachers, Local 920*, 468 A.2d 272 (R.I. 1983). Accordingly a party cannot raise in defense of his alleged misconduct that the court erred in entering the injunctive Order. *Boyls* v. *Boyls*, 473 A.2d 1307 (R.I. 1983).

Failure to brief or argue issues on review of a Contempt Order works a waiver of such issues under Rhode Island law. *Tente* v. *Tente*, 112 R.I. 636, 314 A.2d 149 (1974).

The present "constitutional" issues, even if considered as "new" for arguments sake, are not properly considered under Rhode Island Law in light of the Petitioner's continued non-compliance.

E. The Superior Court's Contempt Order Was Constitutionally Correct.

1) *The Court Has Broad Equity Power to Deal With Contempt*

The Respondent in this case has deliberately disregarded at least twenty-three (23) Court Orders, issued after at least twenty-three (23) Contempt Hearings over approximately thirty-three (33) years. He has been incarcerated approximately six (6) times to no apparent avail. He has litigated and relitigated these issues in at least five (5) different courts of competent trial and appellate jurisdiction.

He continues to violate the terms of the original 1958 Consent Decree and the zoning laws of the Town of Lincoln.

Civil contempt is aimed at preserving and enforcing the rights of parties, to compel obedience to Orders and Decrees and is meant to be coercive in nature. *Palmiggiano* v. *Garrahy*, 448 F.Supp. 659 (D.R.I. 1978). Sanctions for civil contempt should therefore be sufficiently coercive to gain swift compliance. *Marek* v. *Marek*, 383 A.2d 1031 (R.I. 1978).

The right of the courts to conduct their business in an untrammeled way lies at the foundation of the American system of government. Courts necessarily must possess adequate means for addressing contempt. *Woods* v. *Georgia*, 370 U.S. 375 (1962).

In the action below the Rhode Island Superior Court appropriately ordered Mr. Cournoyer to take steps which were calculated to bring him into compliance with the town's zoning ordinances. After thirty-three (33) years of "chances", the court took more conclusive steps to assure compliance.

2) *Cournoyer Has Been Afforded Due Process Under The 14th Amendment*

Rhode Island Courts recognize that due process is not a mechanical rule. It is, instead, one which must be decided by the facts of each case. *D'Agostino* v. *Doorly*, 375 A.2d 948 (R.I. 1977). As long as contempt sanctions for failure to comply with a judicial order are construed so as to compel obedience to an order, due process is deemed satisfied. *Melechinsky* v. *Laurie*, 382 A.2d 1316 (R.I. 1978); *Harrison* v. *Mason & Winograd, Inc.*, 397 A.2d 514 (R.I. 1979).

Rhode Island courts also recognize that due process requires that one charged with contempt be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have the opportunity to testify and to produce witnesses in his own behalf. *Mills* v. *Howard*, 280 A.2d 101 (R.I. 1971).

Cournoyer has been afforded notice and hearing on his contempt for various zoning and court order infractions at least twenty-three (23) times in the same case.

With regard to the latest finding of contempt, Cournoyer was given the clear opportunity to produce witnesses and to cross-examine the witnesses of the town at length, particularly during the week-long evidentiary hearing in November of 1988.

Cournoyer's complaint is that he did not forecast the scope and gravity of the court's order resulting from the contempt hearing. His myopia does not effect the validity of the order itself.

It is not a denial of due process for an appellate state court to dismiss the appeal of a party who, subsequent to his day in court at the trial level, willfully flouts the judicial process. *Hemenway* v. *Hemenway*, 339 A.2d 247 (R.I. 1975).

When viewed against the facts of this case, the substance and form of due process afforded during the course of this litigation was clearly sufficient to meet federal constitutional mandates.

3) *Cournoyer's Right To "Equal Protection" Under The 14th Amendment Has Not Been Abridged*

Cournoyer's contumacious track record ultimately prompted the Rhode Island Superior Court to exercise the full breadth of its equity powers in an effort to prevent another thirty-three (33) years of non-compliant behavior.

Zoning ordinances are proper tools of the local police power. When the terms of a zoning ordinance are rationally enforced to the alleged detriment of a property owner, equal protection notions are not necessarily abridged thereby. See generally, *Skelly* v. *Zoning Board of Review of South Kingstown*, 569 A.2d 1054 (R.I. 1990) and *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 9 (1974).

The court appropriately ordered Cournoyer to remove the violating trailer and to disassemble the garage which was found to be the base of his illegal commercial operation. The illegal commercial activity of Cournoyer, like a phoenix, has risen about twenty-three (23) times from its own ashes. Disassembly of the base of the commercial operation was accordingly an appropriate order under any constitutional standard.

Cournoyer's arguments, and his actions, disregard the basic tenet that individuals in a free and orderly society must abide by laws enacted for the common good. The order requiring Cournoyer's final compliance with the zoning ordinances of the Town is an action reasonably necessary under these very peculiar circumstances to protect the public welfare. The order of the Superior Court was a permissible exercise of both the police power and the equitable jurisdiction of the Court.

F. Review Pursuant To 28 U.S.C. Section 1651 Is Otherwise Improper

The petitioner herein seeks relief based in equity and common law. Various equitable principles militate against review in this case.

Discretionary writs will not be granted in aid of those who come to the court with unclean hands. *United States Ex. Rel. Turner* v. *Fisher*, 222 U.S. 204 (1911). Similarly, "laches" of the petitioner in making application prevents issuance of an extraordinary writ. *Re Eastern Cherokees*, 220 U.S. 83 (1911).

In this case, the Town asserts that Cournoyer's "grandfather rights" and "lack of authority" defenses were disposed of by means of the unappealed 1958 Consent Decree. See *Cournoyer* v. *Sharkey*, 107 R.I. 373 (1970) and *Town of Lincoln* v. *Cournoyer*, 118 R.I. 644, 649 (1977).

The "all writs act" 28 U.S.C., Section 1651, is meant to be used only in exceptional cases where there is clear abuse of discretion or usurpation of judicial power. *LeBuy* v. *Howes Leather Co.*, 352 U.S. 249 reh. den. 352 U.S. 1019 (1957).

Such writs are reserved for truly extraordinary causes and then only to confine an inferior court to the exercise of its prescribed jurisdiction. *Platt* v. *Minnesota Mining and Mfg. Co.*, 376 U.S. 240 (1964).

The all writs act was intended to "effectuate and prevent frustration of orders . . ." issued in the exercise of the court's jurisdiction. *United States* v. *New York Tel. Co.*, 434 U.S. 159 (1977). Here the petitioner seeks to do precisely the opposite by sustaining a thirty-three (33) year history of contempt. On numerous occasions over the past four (4) decades Cournoyer failed to avail himself of the remedies available pursuant to 28 U.S.C. Section 1257.

Review should accordingly be denied.

CONCLUSION

The power of the United States Supreme Court to issue extraordinary writs can be constitutionally exercised only insofar as such writs are in aid of its appellate jurisdiction. The issuance of writs in such cases will usually be refused unless a question of public importance is involved. *Ex Parte Republic of Peru*, 318 U.S. 578 (1943); *United States Alkali Export Assoc.* v. *United States*, 325 U.S. 196 (1945).

On September 17, 1796, George Washington, (no doubt haunted by premonitions of Arthur Cournoyer) offered the following words in his farewell address:

> The very idea of the power and right of the people to establish government presupposes the duty of every individual to obey the established government. . . . Liberty itself will find in such government with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where government is too feeble to . . . confine each member of society within the limits prescribed by the laws and to maintain *all* in the secure and tranquil enjoyment of the rights of person and

> property. *Washington's Farewell Address*, Richardson, ed. *Messages and Papers of George Washington*, Vol. 1 pg. 213.

Washington's words are no less appropriate now than they were one hundred and ninety-five (195) years ago when he struggled to unite disparate, headstrong colonials. Compare his words with those of Superior Court Judge Giannini in this case:

> Now, Mr. Cournoyer may consider himself headstrong. Mr. Cournoyer may be intransigent insofar as his disobedience to Court Orders. I don't intend to be headstrong in this matter. I simply intend to see that the Orders of the Superior Court are obeyed, not only by Mr. Cournoyer but by everybody else who is ordered to do anything by this Court. If I don't fulfill that responsibility, and I may say if any Judge of this Court does not fulfill that responsibility, we might as well close the Courthouse doors. See Transcript below at pg. 20.

The Rhode Island Superior Court acted rationally, appropriately and constitutionally in dealing with Mr. Cournoyer's incredible and infinite agenda of contempt. This Court should not now entertain this matter by way of extraordinary review particularly where his appeal is either premature or time-barred according to well established precedent.

Respectfully submitted,

TOWN OF LINCOLN
By James P. Marusak
Town Solicitor

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

Equity No. 26210

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

SUBSTITUTED FINAL DECREE

This cause came on to be heard on Bill, Answer and Proof, and upon consideration thereof the Court makes the following findings of fact:

(a) The real estate of the Respondent, Joseph A. Cournoyer, is situated partly in a dwelling house district and partly in an agricultural district, as defined by the Zoning Ordinances of the Town of Lincoln.

(b) That the Respondents have placed and are permitting to be placed upon said real estate, for storage thereon, certain trucks, trailers, snow-plows, waste lumber, junk motor vehicles and other items of a junk and waste character.

(c) That the use to which the premises have been put by the Respondents, by themselves and/or *with their permission*, is in violation of the Zoning Ordinances of the Town of Lincoln.

(d) That the use to which said real estate is being put by the Respondents, by themselves and/or *with their permission, is a public nuisance.*

It is therefore

ORDERED, ADJUDGED and DECREED AS FOLLOWS:

That the Respondents are *permanently adjoined* from placing and from *permitting to be placed* upon the real estate owned by the Respondent, Joseph A. Cournoyer, for storage

thereon, trucks, trailers, snow-plows, waste lumber, junk motor vehicles and other items of a junk and waste character.

2. That on or before April 1, 1958 the Respondents are ordered to remove from the said real estate all trucks, trailers, snow-plows, waste lumber, junk motor vehicles and all other items of a junk and waste character.

3. That the Respondents are permanently enjoined from violating the provisions of the Zoning Ordinances of the Town of Lincoln.

Entered as a Decree of this Court this 18th day of February, A. D. 1958.

Assented to:

s/ GERALD A. OSTER
Solicitor for the Complainant

s/ ANGELO DISPIRITO
Solicitor for the Respondent

Enter: s/ FROST, P.J.
2/18/58

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

Equity No. 26210

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

ATTORNEYS FOR PLAINTIFF
Gerald Oster, Harry Asquith

ATTORNEYS FOR DEFENDANT
Alfred Silverstein, John Mutter, Earl Pasbach, Aram Berberian, Angelo DiSpirito

NO.	DATE	ENTRIES
1	8/6/57	Bill of complaint filed, and subpoena with two notices issued returnable September 16, 1957.
2	2/18/58	Frost, J. Final Decree entered.
3	5/1/58	Petition to adjudge respondent in contempt filed.
4	7/6/59	Decree entered adjudging respondent in contempt and body attachment ordered issued.
5	8/19/59	Petition to modify and vacate filed.
6	11/20/59	Weisberger, J. Petition to vacate assigned for hearing to November 23, 1959.
7	11/10/59	Decree entered adjudging respondent in contempt.
8	12/7/59	Murray, J. Order entered releasing respondent from ACI conditionally.
9	12/15/59	Decree entered.

NO.	DATE	ENTRIES
10	12/18/59	Inventory in compliance with decree of 12/15/59 filed.
11	3/21/61	Perkins, J. Order authorizing intervention entered.
12	5/15/61	Petition by intervenor to adjudge respondent in contempt filed, and decree entered (Perkins, J.)
13	5/19/61	Claim of appeal by respondent from decree entered 5/15/61 filed.
14	6/7/61	Inventory filed.
15	6/30/61	Decree entered adjudging respondents in contempt.
16	7/3/61	Decree entered.
17	7/3/61	Claim of appeal filed.
18	7/7/61	Claim of appeal filed.
	9/12/61	Transcript allowed and cause including all papers therein certified to the Clerk of Supreme Court.
19	10/17/62	(SUPREME COURT) Condon, J. Order entered allowing substituted Bill of Complaint.
20	12/24/62	Supreme Court opinion filed respondents appeal is affirmed, decree appealed from is reversed and cause is remanded to Superior Court for further proceedings.
21	4/29/63	Heard on petition for sentencing Decree entered.
22	5/9/63	Claim of appeal filed.
23	1/15/69	Weisberger, J. Order entered assigning motion for sentence to January 29, 1969.
24	2/8/69	Weisberger, J. Decree entered, sentencing deft. to pay fine of $250. and to be committed to ACI for 90 days. Sentence is suspended, conditionally.
	4/30/69	Resp. motion to reopen his case is denied. 1969 May 9. Resp. motion to suspend sentence

NO.	DATE	ENTRIES
		of 2/3/69 is denied. Court orders suspension of sentences removed. Resp. is committed to ACI for 90 days and fine not paid and committed.
	11/8/69	This cause including all papers therein certified and transmitted to Clerk of Supreme Court.
25	7/15/70	Supreme Court opinion filed.
	7/23/70	Giannini J. Respondent appears and oral motion for stay of sentence denied and pursuant to Supreme Court opinion is committed on sentence previously imposed.
26	11/9/70	Weisberger, J. Order entered.
27	1/4/71	Weisberger, J. Decree entered appointing Harry Asquith Special Master.
28	1/4/71	Notice of appeal filed.
	4/8/71	This cause including all papers therein certified and transmitted to the Clerk of Supreme Court.
	1/10/72	Resp. appeal is denied and dismissed by Supreme Court.
29	9/18/72	Weisberger, J. Order entered granting special master fee of $525.00.
30	6/10/72	Opinion of Supreme Court filed.
31	12/14/73	Motion to vacate filed.
32	12/3/73	Petition for instructions filed.
	12/17/73	Weisberger, P.J. Respondent's motion to vacate the final decree of February 18, 1958 is heard and same is denied. Complainant and Special Master's petition for instructions is heard and approved. Order to be entered. L.O.W.
33	12/21/73	Order entered.
34	1/28/74	Weisberger, P.J. Resp. motion for stay is heard and same is denied. L.O.W.

NO.	DATE	ENTRIES
	3/5/74	Weisberger, P.J. Sealed bids as per Court order docketed 12-21-73 are opened in open court and a bid of $1750.00 North Providence Used Auto Parts was accepted. Order to enter. L.O.W.
35	3/5/74	Order entered.
36	5/31/74	Petition for instructions filed.
	6/11/74	Weisberger, P.J. Heard on petition for instructions and order to enter. L.O.W.
37	6/20/74	Order entered authorizing sale.
38	7/3/74	Notice of appeal by defendant from order entered 6-20-74 filed. Copies to attorneys for plaintiff.
39	7/5/74	Order for transcript filed.
40	7/11/74	Weisberger, P.J. Request for stay denied.
41	9/16/74	Roberts, C.J. Order entered enlarging time for filing transcript to October 16, 1974.
	10/12/74	Transcript filed.
	10/15/74	This cause including all papers herein, transcript and exhibits certified to Clerk of Supreme Court.
	10/22/74	Request for stay filed.
	10/22/74	Motion to vacate filed.
42	10/25/74	Entry of appearance filed.
	10/25/74	Weisberger, P.J. Sealed bids as per Court order and a bid of $7500.00 was accepted. Order to enter. Cont. to 10-30-74.
43	10/30/74	Proof of service filed. (4 witness subpoenas)
44	10/30/74	Weisberger, P.J. Order entered.
	3/15/75	Proofs of service filed.
	3/15/75	Weisberger, P.J. Heard on petition for instructions and order to enter. L.O.W.
	4/29/75	Petition for instructions filed.
	4/29/75	Order of notice entered returnable May 15, 1975.

NO.	DATE	ENTRIES
45	5/12/76	Petition for instructions filed.
	5/19/76	Weisberger, P.J. Heard on petition for instructions and Order to sell to be entered. L.O.W.
46	5/19/81	Police summons filed.
47	6/1/76	Notice of appeal filed.
48	6/3/76	Weisberger, P.J. Defendants oral petition for a stay hearing in part & cont. to 6-8-76 for further consideration. L.O.W.
	6/3/76	Weisberger, P.J. Defendants petition for a stay of the order entered on 5-19-76 is heard in part & cont. to 6-8-76.
	6/8/76	Weisberger, P.J. Further heard & cont. to 6-15-76.
49	6/9/76	Weisberger, P.J. Order entered that Harry W. Asquith is appointed Special Master.
50	6/9/76	Weisberger, P.J. Order entered that the Special Master be awarded a fee of $1750.00.
51	6/18/76	Weisberger, P.J. Order entered.
52	6/27/76	Stipulation: Domenic A. Mosca, Jr. withdraws his appearance for defendant, Arthur J. Cournoyer. Arthur J. Cournoyer enters his appearance pro se ipso.
53	4/19/77	Weisberger, P.J. Order entered that the oral pro se motion of the defendant to discharge the Special Master is denied.
		SUPREME COURT
	10/16/74	Papers, transcript and exhibits filed.
	5/4/77	Heard on defendants reasons of appeal. Briefs submitted.
	7/18/77	Opinion filed. The defendants appeal is denied and dismissed.
	7/26/77	Papers, transcripts and exhibits remanded to the Clerk of Superior Court Providence County. s/ BRIAN B. BURNS

NO.	DATE	ENTRIES
	7/26/77	Papers, transcript and exhibits received from Supreme Court. Transcript filed herein. Exhibits filed in Exhibit Room.
54	5/8/80	Petition for instructions filed.
	5/27/80	Giannini, P.J. Heard & cont. to 7-7-80 before Giannini, P.J. Order to enter for signature of the Court.
55	5/27/80	Entry of appearance filed for respondent.
56	5/29/80	Giannini, P.J. Order entered.
57	6/2/80	Letter to Judge Giannini filed.
58	6/3/80	Response to petition for instructions filed.
59	6/3/80	Offer of proof filed.
60	6/3/80	Motion to discharge Special Master filed.
61	7/7/80	Copy of Page 252 of the Town Council Journal Book 9 filed.
	7/7/80	Giannini, P.J. Heard on instruction to enforce decree.
	7/8/80	Further heard.
	7/9/80	Hearing concludes. Defendants motion to modify final decree is denied. Deft. Arthur Cournoyer to be sent to ACI until order of the Court is carried out. Defendant to appear at 10:00 a.m. July 10, 1980 to begin sentence. Exhibits filed herein.
62	7/9/80	Giannini, P.J. Order entered.
63	7/10/80	Notice of appeal to Supreme Court filed. Fee paid. Opposing counsel notified.
	7/10/80	Giannini, P.J. Defendant appears for sentencing. Defendant held without bail at the ACI in violation of Court order. Defendant to remain until order is carried out.
64	7/10/80	Giannini, P.J. Order entered.
	7/15/80	Giannini, P.J. Defendant appears for motion to be released on bail and same is denied.

NO.	DATE	ENTRIES
	7/21/80	Giannini, P.J. Heard on petition of Special Master. Deft. Arthur A. Cournoyer released from ACI on entry of order filed this date.
65	7/21/80	Giannini, P.J. Order entered.
66	8/7/80	Notice of appeal to Supreme Court filed. Attorneys of record notified. Fee paid.
	8/8/80	This cause including all papers herein, no transcript, no exhibits certified to the Clerk of Supreme Court.
		SUPREME COURT
	8/12/80	Papers and exhibits filed.
	9/18/80	Motion to remand. Granted Kelleher, J. 9-19-80.
	9/19/80	Papers and exhibits remanded to Clerk, Superior Court.
67	9/8/80	Creato, J. Order entered: Respondents motion to enlarge time & to have stenographer retire from service is denied on the grounds that this Court lacks subject matter jurisdiction.
	9/24/80	This cause including all papers herein, no transcript and exhibits certified to the Clerk of Supreme Court.
		SUPREME COURT
	9/24/80	Papers refiled.
	10/8/81	Heard on Show Cause Order.
	10/8/81	Order entered. The appeal of the defendant is denied and dismissed.
	10/9/81	Papers, transcripts and exhibits remanded to the Clerk of Superior Court, Providence County. s/ BRIAN B. BURNS
	10/19/81	Papers, transcript and exhibits received from Clerk of Supreme Court. Transcript filed Section 45 #17. Exhibit: filed with case.

NO.	DATE	ENTRIES
	11/12/81	Giannini, P.J. Heard and Special Master to enter order as hearing continued to 11-19-81. DFL
68	11/13/81	Giannini, P.J. Order entered.
	11/19/81	Giannini, P.J. Opening of bids by plaintiff-reserved. Defts. motion for stay is denied. Order to enter. Cont. to later date. Exhibits filed in case.
69	11/20/81	Giannini, P.J. Order entered.
	11/27/81	Giannini, P.J. Hearing commences. Arthur Cournoyer is sworn. Case cont. to 12-14-81.
70	12/14/81	Transcript of hearing filed.
71	12/14/81	Joseph Little enters his appearance for plaintiff.
72	12/14/81	Memorandum filed.
	12/14/81	Giannini, P.J. Hearing commences. Exhibits filed this date. Exhibit 1 (4 bids) opened this date. Cont. to 1-5-82. Exhibits filed in case.
	1/12/82	Giannini, P.J. Court awards bid to Foot Inc. of Wrentham, MA for the sum of $3600 to remove all vehicles from lot. Deft. motion for stay is denied. Order to enter for signature of the Court. Exhibits 5 filed in case.
73	1/15/82	Giannini, P.J. Orders (2) entered.
74	2/2/82	Respondent Arthur J. Cournoyer appeals to the Supreme Court from the Orders of the Superior Court entered on July 9, 1980; July 21, 1980; and Jan. 15, 1982. (Seventy dollars paid to the Clerk of Superior Court) Mailed copy to Joseph T. Little, Esq., Harry Asquith, Esq., Supreme Court.
75	2/11/82	Memorandum report filed.
76	2/11/82	Order for transcript filed.
77	2/16/82	Giannini, P.J.; Order entered: The above motion shall be heard before Mr. Justice Giannini on February 22, 1982.

NO.	DATE	ENTRIES
	2/22/82	Giannini, P.J.; Defendant's motion to correct record is granted. Order to enter.
78	2/24/82	Giannini, P.J.; Order entered.
	2/24/82	This cause including all papers herein, transcript and exhibits certified to the Clerk of Supreme Court.
	6/8/82	Papers transcript and exhibits received from the Clerk of Supreme Court. Case, transcripts, exhibits filed in special drawer.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

SUPERIOR COURT

Equity No. 26210

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

ORDER

This matter was heard on June 14, 1990 before Mr. Presiding Justice Anthony A. Giannini pursuant to a status hearing; the Respondent having been sentenced by this Court for civil contempt to serve a term of six (6) months at the Adult Correctional Institutions, said term to be suspended conditionally. Said sentence was imposed on March 1, 1990. The suspension provision was removed for violation of condition by this Court on May 7, 1990, after hearing and Respondent was ordered to commence serving the six-month sentence.

On June 14, 1990 after hearing and receipt of testimony and upon consent of the parties is hereby ordered as follows:

1. That the Respondent is released from the Adult Correctional Institutions pursuant to this order and upon the entry of this order;

2. That Respondent's remaining sentence is in no manner affected by this release, but the total sentence shall remain in full force and effect during the period of this conditional release.

3. That during his release, Respondent shall actively engage in the cleanup of the premises. On or before July 18, 1990, the Respondent shall remove all materials as ordered from his land, so as to bring him into compliance with the

zoning ordinances of the Town of Lincoln and the terms of this Court's orders.

4. That it is the intent of this Court and all parties to this action, including Respondent, that he shall, on or before July 18, 1990, become and forever remain in compliance with said zoning ordinances;

5. That if Respondent is or becomes in violation of said ordinance, the said sentence shall be reactivated in full and the Respondent shall then be returned forthwith to the Adult Correctional Institutions to serve the remainder of said sentence in its entirety, including the imposition of a day to day sanction of incarceration, fines or both, until the Respondent shall become in compliance with said zoning ordinances;

6. Respondent waives knowingly, willingly and voluntarily any claim or right he may arguably have to contest serving the remainder of said sentence. Respondent acknowledges that his term is being interrupted and not vacated or terminated in any manner or form. Respondent further admits that the sentence remains totally and validly in existence until the expiration of the term and until compliance by the Respondent or until modification by the Court;

7. The issues presently pending on appeal shall remain unaffected by the terms of this order;

8. That the Respondent voluntarily waives any right of appeal as to the terms of this order if he is reincarcerated pursuant to the terms of this order;

9. This matter is continued to July 25, 1990 at 10:00 a.m. for status hearing in order for the Town of Lincoln and the Special Master to report to the Court as to what action has

been taken by the Respondent, as to what further action is recommended and for further action by this Court.

By consent on this 14th day of June, 1990.

s/ ARTHUR J. COURNOYER
ARTHUR J. COURNOYER

s/ CHARLES J. ROGERS
CHARLES J. ROGERS,
as Attorney for Arthur J. Cournoyer

s/ JAMES P. MARUSAK
Town of Lincoln by JAMES P. MARUSAK, Town Solicitor

By order (Illegible), Deputy Clerk

Enter GIANNINI, P.J.
June 14, 1990

SUPREME COURT
No. 90-145 — Appeal

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

ORDER

This case came before this court for oral argument on November 5, 1990. Both parties had been ordered to show cause why the issues raised by this appeal should not be summarily decided. Defendant is appealing his contempt conviction. The conviction arises out of the defendant's failure to comply with a court decree ordering him to clean up his property. Defendant alleges that the Superior Court judge exceeded his authority in ordering defendant to remove his trailer home and garage from his property, and in enjoining defendant from keeping more than one registered vehicle on the property.

After careful consideration of the arguments and memoranda submitted by the parties, this court finds that cause has not been shown. Accordingly, we summarily decide that the trial judge did not exceed his authority in entering the above order.

Therefore, defendants' appeal is denied and dismissed. The decision of the Superior Court is hereby affirmed.

Entered as an Order of this Court this 16th day of November 1990.

By Order,

s/ ILLEGIBLE

MATTHEW J. SMITH
Clerk

Mr. Chief Justice Fay did not participate.